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FILED
DISTRICT COURT OF GUAM

NOV - 7 2005 9/

MARY L.M. MORAN
CLERK OF COURT

7 IN THE DISTRICT COURT OF GUAM

8 -----
9 UNITED STATES OF AMERICA)

CRIMINAL CASE NO. CR98-00310

10 Plaintiff,)

11 vs.)

MEMORANDUM OF LAW

12 REX S. ALADO)

13 Defendant.)

14 -----
15 **1. PROCEDURAL BACKGROUND.**

16 Rex S. Alado entered into a Second Amended Plea Agreement on August 10, 2005.

17 Said Plea Agreement was entered pursuant to Fed.R.Crim.P. 11(c)(i)(C), which provides a sentence
18 for time served. Defendant entered into said Second Amended Plea Agreement under the Belief he
19 was to be released immediately, or soon thereafter following the entry of his guilty plea, so that he
20 could spend time with his ailing elderly father, who is to begin serving a three year sentence at the
21 Bureau of Prisons in an unrelated case on December 1, 2005.

22 On August 10, 2005, this Court deferred acceptance of the Plea Agreement pending
23 review of his presentence investigation and report. Sentencing is scheduled for November 8, 2005

ORIGINAL

1 at the hour of 10:00 o'clock a.m.

2 **2. ALADO'S BASIS FOR WITHDRAWAL OF**
3 **PLEA.**

4 It is Rex Alado's position that entering into the Second Amended Plea Agreement
5 was a mistake because he was not released immediately, or shortly after entering his guilty plea as
6 recommended by the U.S. Attorney's office. As it turns out, Defendant will not be released after
7 sentencing, but will be immediately detained for deportation proceedings as recommended by the
8 U.S. Probation office. Because of the above reasons, it would be fair and just to allow Defendant
9 to withdraw his plea of guilty and proceed on with his motion to dismiss.

10 **3. ARGUMENT.**

11 **a. Rule 32(e).**

12 Rule 11 of the Federal Rules of Criminal Procedure governs the Plea Agreement
13 procedure. Withdrawal of a plea prior to imposition of sentence is governed by Rule 32(e). That
14 subsection states:

15 **Plea Withdrawal.** If a motion to withdraw a plea of guilty or *nolo*
16 *contendere* is made before sentence is imposed, the court may permit
17 the plea to be withdrawn if the defendant shows any fair and just
reason.

18 Until mid-1997, the Ninth Circuit rule was that a defendant had an absolute right to withdraw his
19 guilty plea prior to sentencing. *U.S. vs. Washman*, 66 F.3d 210 (9th Cir. 1995). However, on May
20 26, 1997, the Supreme Court determined otherwise and held that a defendant could not withdraw
21 his plea prior to sentencing unless, pursuant to Rule 32(e), he showed a "fair and just reason."

22 Certainly, in the instant case, Alado has demonstrated a fair and just reason for
23 withdrawing his plea agreement. Pursuant to the plea agreement, Alado was to be sentenced "to the

1 extent practicable taking into account the schedule of the U.S. Probation Office.” (§7, p. 4 of the
2 Second Amended Plea Agreement). Defendant submits that two months to prepare a Presentence
3 Investigation Report under a 11(c)(i)(C) plea is an inordinately long period of time and substantially
4 affects Defendant’s rights. Furthermore, Defendant entered into said plea agreement only because
5 he believed he would be released so he could spend time with his father and to help take care of his
6 mother while his father serves his prison sentence. Additionally, Defendant entered into this
7 agreement even though he has an extremely valid motion to dismiss pending before this Court.

8 **4. CONCLUSION.**

9 For the reasons above-articulated, this Court should grant Alado’s motion to
10 withdraw the plea agreement and to continue sentencing. He has provided a fair and just reason for
11 doing so. Alado is not asking to contest the Indictment. If this Court permits him to withdraw from
12 the plea agreement, Alado will then move forward with his pending motion to dismiss. He will
13 continue to accept responsibility. If Alado’s motion to dismiss is denied, then Alado will still be
14 sentenced in the future for his criminal conduct.

15 Furthermore, the Government will not be prejudiced by granting Alado’s motion and
16 the interests of justice are best served by granting Alado’s motion.

17 DATED at Hagåtña, Guam, on November 7, 2005.

18 **TEKER TORRES & TEKER, P.C.**

19
20 By 

21 **SAMUEL S. TEKER, ESQ.**

Attorneys for Defendant, *Rex S. Alado*

22 LJT:cs

23 PLDGS:ALADO, REX:006

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